

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 447

Introduced by Senator Lara

February 21, 2013

An act to amend Section 10295.5 of the Public Contract Code, and to amend Sections 2717 and 2774.1 of the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 447, as amended, Lara. Surface mining operations.

(1) Existing law, the Surface Mining and Reclamation Act of 1975, prohibits, with certain exceptions, a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency, as defined, for the operation. For purposes of compliance with specified provisions of the Public Contract Code, the act requires the Department of Conservation to, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available, upon request, to the Department of General Services or any other state or local agency, a list identifying certain surface mining operations. Existing law also prohibits a state agency from acquiring or utilizing mined material, or from contracting with a person utilizing these materials, as specified, unless the material is produced from a mining operation on that list that meets certain requirements.

This bill, in regards to mined materials a state agency may acquire or utilize, would remove the condition that the surface mining operation meet certain requirements, and instead require that the mined material be produced from a surface mining operation on the above-described

list. This bill would also require this list to identify surface mining operations whose reclamation plan has been approved and is in compliance with the act, whose mining operation is in compliance with the approved reclamation plan or an ~~applicable compliance~~ order to *comply*, and whose mining operation has an approved financial assurance, as specified.

(2) Existing law requires that the lead agency have primary responsibility in enforcing the act. The act permits, in cases where the State Mining and Geology Board is not the lead agency, the Director of Conservation to initiate enforcement actions if the lead agency has been notified by the director, for at least 15 days, of a violation and has not taken appropriate enforcement action, or the director determines there is a violation which presents an imminent and substantial endangerment to the public health or safety, or the environment.

This bill would require that the lead agency be notified of a violation for at least 30 days before the director could initiate enforcement actions, and would provide that a lead agency's failure to issue an order to comply within a reasonable time after issuing a notice of violation may be a failure to take appropriate enforcement action that permits the initiation of an enforcement action by the director.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295.5 of the Public Contract Code is
2 amended to read:
3 10295.5. (a) Notwithstanding any other provision of law, a
4 state agency shall not acquire or utilize sand, gravel, aggregates,
5 or other minerals produced from a surface mining operation subject
6 to the Surface Mining and Reclamation Act of 1975 (Chapter 9
7 (commencing with Section 2710) of Division 2 of the Public
8 Resources Code), unless the operation is identified in the list
9 published pursuant to subdivision (b) of Section 2717 of the Public
10 Resources Code.
11 (b) Notwithstanding any other provision of law, a state agency
12 shall not contract with a person who is not a surface mining
13 operator, but who is supplying or utilizing sand, gravel, aggregates,
14 or other minerals, to perform work for, or supply materials to, a
15 state agency, unless the operation is identified in the list published

1 pursuant to subdivision (b) of Section 2717 of the Public Resources
2 Code.

3 (c) For purposes of this section, “minerals” means any naturally
4 occurring chemical element or compound, or groups of elements
5 and compounds, formed from inorganic processes and organic
6 substances, including, but not limited to, coal, peat, and bituminous
7 rock, but excluding geothermal resources, natural gas, and
8 petroleum.

9 (d) The requirements of this section shall apply to mining
10 operations on federal lands or Indian lands that are subject to the
11 Surface Mining and Reclamation Act of 1975 (Chapter 9
12 commencing with Section 2710) of Division 2 of the Public
13 Resources Code) pursuant to a memorandum of understanding
14 between the Department of Conservation and the federal agency
15 having jurisdiction over the lands.

16 SEC. 2. Section 2717 of the Public Resources Code is amended
17 to read:

18 2717. (a) Notwithstanding Section 10231.5 of the Government
19 Code, the board shall submit to the Legislature on December 1st
20 of each year a report on the actions taken pursuant to this chapter
21 during the preceding fiscal year. The report shall include a
22 statement of the actions, including legislative recommendations,
23 that are necessary to carry out more completely the purposes and
24 requirements of this chapter.

25 (b) For purposes of ensuring compliance with Sections 10295.5
26 and 20676 of the Public Contract Code, the department shall, at a
27 minimum, quarterly publish in the California Regulatory Notice
28 Register, or otherwise make available upon request to the
29 Department of General Services or any other state or local agency,
30 a list identifying all of the following:

31 (1) Surface mining operations for which a report is required and
32 has been submitted pursuant to Section 2207 that indicates all of
33 the following:

34 (A) The reclamation plan and financial assurances have been
35 approved pursuant to this chapter.

36 (B) Compliance with state reclamation standards developed
37 pursuant to Section 2773.

38 (C) Compliance with the financial assurance guidelines
39 developed pursuant to Section 2773.1.

1 (D) The annual reporting fee has been submitted to the
2 Department of Conservation.

3 (2) Surface mining operations for which an appeal is pending
4 before the board pursuant to subdivision (e) of Section 2770, if
5 the appeal was not pending before the board for more than 180
6 days.

7 (3) Surface mining operations for which an inspection is required
8 and for which an inspection notice has been submitted by the lead
9 agency pursuant to Section 2774 that indicates both compliance
10 with the approved reclamation plan and that sufficient financial
11 assurances, pursuant to Section 2773.1, have been approved and
12 secured.

13 (4) Surface mining operations that meet all of the following:

14 (A) The reclamation plan has been approved and is in
15 compliance with this chapter.

16 (B) The mining operation is in compliance with ~~the approved~~
17 ~~reclamation plan or an applicable compliance order.~~ *either of the*
18 *following:*

19 *(i) The approved reclamation plan.*

20 *(ii) An order to comply issued pursuant to this chapter, which*
21 *may be stipulated to by the department, lead agency, and the*
22 *operator, for enforcement actions initiated by the director.*

23 *(iii) An order to comply issued pursuant to this chapter, which*
24 *may be stipulated to by the lead agency and the operator, with*
25 *notice of the stipulation provided to the director, for enforcement*
26 *actions initiated by the lead agency.*

27 (C) ~~The~~ *In accordance with Section 2773.1 and Article 11*
28 *(commencing with Section 3800) of Title 14 of the California Code*
29 *of Regulations, as amended, the surface mining operation has an*
30 *approved financial assurance in place that* ~~the lead agency~~
31 ~~determines~~ *is adequate for reclamation pursuant to the approved*
32 *reclamation plan.*

33 (c) A report submitted pursuant to subdivision (a) shall be
34 submitted in compliance with Section 9795 of the Government
35 Code.

36 SEC. 3. Section 2774.1 of the Public Resources Code is
37 amended to read:

38 2774.1. (a) Except as provided in subdivision (i) of Section
39 2770, if the lead agency or the director determines, based upon an
40 annual inspection pursuant to Section 2774, or otherwise confirmed

1 by an inspection of the mining operation, that a surface mining
2 operation is not in compliance with this chapter, the lead agency
3 or the director may notify the operator of that violation by personal
4 service or certified mail. If the violation extends beyond 30 days
5 after the date of the lead agency's or the director's notification,
6 the lead agency or the director may issue an order by personal
7 service or certified mail requiring the operator to comply with this
8 chapter or, if the operator does not have an approved reclamation
9 plan or financial assurances, cease all further mining activities.

10 (b) An order issued under subdivision (a) shall not take effect
11 until the operator has been provided a hearing before the lead
12 agency for orders issued by the lead agency, or board for orders
13 issued by the director, concerning the alleged violation. An order
14 issued under subdivision (a) shall specify which aspects of the
15 surface mine's activities or operations are inconsistent with this
16 chapter, shall specify a time for compliance that the lead agency
17 or director determines is reasonable, taking into account the
18 seriousness of the violation and any good faith efforts to comply
19 with applicable requirements, and shall set a date for the hearing,
20 which shall not be sooner than 30 days after the date of the order.

21 (c) An operator who violates or fails to comply with an order
22 issued under subdivision (a) after the order's effective date, as
23 provided in subdivision (b), or who fails to submit a report to the
24 director or lead agency as required by Section 2207, shall be subject
25 to an order by the lead agency or the director imposing an
26 administrative penalty of not more than five thousand dollars
27 (\$5,000) per day, assessed from the original date of noncompliance
28 with this chapter or Section 2207. The penalty may be imposed
29 administratively by the lead agency or the director. In determining
30 the amount of the administrative penalty, the lead agency or the
31 director shall take into consideration the nature, circumstances,
32 extent, and gravity of the violation or violations, any prior history
33 of violations, the degree of culpability, economic savings, if any,
34 resulting from the violation, and any other matters justice may
35 require. Orders setting administrative penalties shall become
36 effective upon issuance of the order and payment shall be made
37 to the lead agency or the director within 30 days, unless the
38 operator petitions the legislative body of the lead agency, the board,
39 or the superior court for review as provided in Section 2774.2. An
40 order shall be served by personal service or by certified mail upon

1 the operator. Penalties collected by the director shall not be used
2 for purposes other than to cover the reasonable costs incurred by
3 the director in implementing this chapter or Section 2207.

4 (d) If the lead agency or the director determines that the surface
5 mine is not in compliance with this chapter, so that the surface
6 mine presents an imminent and substantial endangerment to the
7 public health or the environment, the lead agency or the Attorney
8 General, on behalf of the director, may seek an order from a court
9 of competent jurisdiction enjoining that operation.

10 (e) Upon a complaint by the director, the department, or the
11 board, the Attorney General may bring an action to recover
12 administrative penalties under this section, and penalties under
13 Section 2207, in any court of competent jurisdiction in this state
14 against any person violating any provision of this chapter or Section
15 2207, or any regulation adopted pursuant to this chapter or Section
16 2207. The Attorney General may bring this action on his or her
17 own initiative if, after examining the complaint and the evidence,
18 he or she believes a violation has occurred. The Attorney General
19 may also seek an order from a court of competent jurisdiction
20 compelling the operator to comply with this chapter and Section
21 2207.

22 (f) (1) The lead agency has primary responsibility for enforcing
23 this chapter and Section 2207. In cases where the board is not the
24 lead agency pursuant to Section 2774.4, enforcement actions may
25 be initiated by the director pursuant to this section only after the
26 violation has come to the attention of the director and either of the
27 following occurs:

28 (A) The lead agency has been notified by the director in writing
29 of the violation for at least 30 days, and has not taken appropriate
30 enforcement action, which may include failing to issue an order
31 to comply within a reasonable time after issuing a notice of
32 violation.

33 (B) The director determines that there is a violation which
34 amounts to an imminent and substantial endangerment to the public
35 health or safety, or to the environment.

36 (2) The director shall comply with this section in initiating
37 enforcement actions.

- 1 (g) Remedies under this section are in addition to, and do not
- 2 supersede or limit, any and all other remedies, civil or criminal.

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